

Whether transportation and delivery charges may be deducted by retailers in calculating Retailers' Occupation Tax liability depends not upon the separate billing of such transportation or delivery charges but upon whether the charges are included in the selling price of the property or are contracted for separately by purchasers and retailers. See 86 Ill. Adm. Code 130.415. (This is a GIL.)

November 29, 2004

Dear Xxxxx:

This letter is in response to your letter dated December 12, 2003, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Attached is an invoice from ABC which demonstrates the issue I have had with this company for at least the last three years. They have consistently charged sales tax on the shipping charges for delivery of the tangible property purchased through them. I have complained on numerous occasions to no avail.

Referring to 86 Ill Admin Code 130.450(b) as well as several opinion letters (ST 90-0519; ST 89-0353; and ST 83-0039) it is obvious that shipping charges separately identified and added to the price of the articles is not taxable.

I have 2 questions. First, how do I get a refund of the overcharges? Second, has ABC passed the taxes on to the state or simply pocketed these taxes as part of their profits.

Thank you for your attention to this matter.

DEPARTMENT'S RESPONSE:

I apologize for the delay in responding to your inquiry. Whether a seller must include amounts for transportation and delivery charges in his gross receipts for purposes of calculating Retailers' Occupation Tax liability depends upon whether the transportation or delivery charges are included in the selling price of the property which is sold, or whether the seller and the buyer contract separately for such transportation or delivery charges and do not include such charges in such selling price. (See, 86 Ill. Adm. Code 130.415.) In the former case, the charges will be subject to tax, in the latter case, they will not be subject to tax. In any event, charges for transportation and delivery must not exceed the costs of transportation or delivery. If those charges do exceed the cost of transportation or delivery, the excess amount is subject to tax. The rule cited in this paragraph discusses evidence that may be used to establish that transportation and delivery charges were agreed to separately and apart from the selling price.

If a taxpayer has paid tax to the Department in error, that taxpayer may file a claim for credit. (See 86 Ill. Adm. Code 130.1501.) In this case, you cannot get relief directly from the Department since the tax was paid to the Department by ABC. Claims for credit and refunds are available when a person shows that he paid tax to the Department as a result of a mistake of fact or law. Only the remitter of the tax erroneously paid to the Department is authorized to obtain a refund or credit. In order to obtain a refund or credit, the remitter of the tax must first demonstrate that he or she has borne the burden of the tax erroneously paid or that he has unconditionally repaid the amount of the tax to his vendee from whom he has collected such amount. Retailers are not required by law to apply for such credits or refunds; rather, this procedure is voluntary. Whether or not the retailer refunds the tax paid and files a claim for credit with the Department is a private matter between the retailer and the purchaser. This matter must be pursued with the retailer.

The Department is not authorized to disclose information about a specific taxpayer's returns or concerning any investigation that may be conducted by the Department. The information in this letter will, though, be forwarded to the Department's Audit Bureau for review.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).]

Sincerely,

Samuel J. Moore
Associate Counsel

cc: Audit Bureau